

**IN THE UNITED STATES DISTRICT COURT FOR
THE SOUTHERN DISTRICT OF WEST VIRGINIA**

HUNTINGTON DIVISION

JOSEPH PNIEWSKI,

Plaintiff,

v.

CIVIL ACTION NO. 3:04-0354

MARJORIE MARTORELLA., individually
and in her official capacity as Special
Prosecutor of Wayne County, WAYNE
COUNTY COMMISSION, and WEST
VIRGINIA PROSECUTING ATTORNEYS
INSTITUTE, a state agency,

Defendants.

ORDER

This action was referred to the Honorable Maurice G. Taylor, Jr., United States Magistrate Judge, for submission to this Court of proposed findings of fact and recommendation for disposition, pursuant to 28 U.S.C. § 636(b)(1)(B). Previously, this Court accepted and incorporated the Findings and Recommendations of the Magistrate Judge that dismissed several claims of Plaintiff Joseph Pniewski against the West Virginia Prosecuting Attorneys Institute and Defendant Marjorie Martorella. *See Order* (entered on Mar. 25, 2005). The remaining claims are state law claims against Defendant Martorella and claims against the Wayne County Commission, which these Defendants have moved to dismiss. [Doc. Nos. 44 and 82].


Upon consideration of those motions, the Magistrate Judge has submitted additional findings of fact and recommended that the motions be granted and that Plaintiff's action be dismissed. Specifically, the Magistrate Judge determined that the remaining claims against

Defendant Martorella are barred under the doctrine of prosecutorial immunity and there is no basis upon which the Wayne County Commission can be held liable. Plaintiff, who is acting pro se, filed objections to the Findings and Recommendation on August 4, 2008. The Court has reviewed those objections and agrees with the Magistrate Judge that Defendant Martorella is entitled to prosecutorial immunity and Plaintiff has failed to allege viable claims against the Wayne County Commission.

Accordingly, the Court accepts and incorporates herein the Findings and Recommendation of the Magistrate Judge and **GRANTS** Defendants' motions to dismiss and **ORDERS** that this action be dismissed from the docket of the Court.

The Court **DIRECTS** the Clerk to send a copy of this Order to Magistrate Judge Taylor, counsel of record, and any unrepresented parties.

ENTER: August 25, 2008

A handwritten signature in black ink, appearing to read 'Robert C. Chambers', is written over a horizontal line.

ROBERT C. CHAMBERS
UNITED STATES DISTRICT JUDGE